



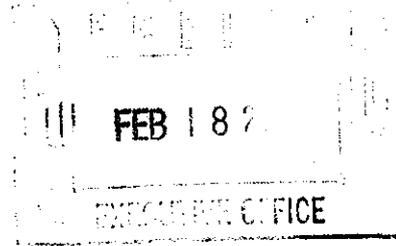
PUBLIC WORKS
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February 17, 2004

Chairman Arthur G. Baggett, Jr.
Members of the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



**Re: Comments on the Draft Water Quality Control Policy for
Developing California's Clean Water Act Section 303(d) List
and Draft Functional Equivalent Document**

Dear Chairman Baggett and Members of the Board:

The City of Burbank Public Works appreciates the opportunity to comment on the State Water Resources Control Board's (State Board) Draft Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (Draft Listing Policy) and Functional Equivalent Document (FED).

We appreciate the State Board staff's efforts to establish a reasonable and objective approach to assessing California's Surface Waters. We support the use of consistent and scientifically sound criteria and adopted water quality standards to determine impaired waters. However, we do have a number of concerns with this draft that we would like the State Board to change.

1. Consolidation of the Lists

The Draft Listing Policy proposes one 303(d) list with three categories (Water Quality Limited Segments, TMDLs Completed, and Enforceable Programs) rather than the recommended multiple categories included in the July 1, 2003 Draft Water Quality Control Policy for Guidance on Assessing California's Surface Waters (July 2003 Draft). Although we recognize the effort required to develop the California Integrated Water Quality Report (Integrated Report), we strongly urge the State Board to adopt a final policy that contains, at minimum, a separate list for waterbodies where impairment may be suggested, but there is not enough credible or objective data to warrant a listing.

The FED itself recognizes the value of having such a "preliminary" list to better "triage" the real and pressing water quality problems facing California. For instance, the FED notes that, "water bodies placed on the preliminary (watch,

monitoring or planning) list would be the focus of additional monitoring and assessment of new data and information. This additional assessment would lead to a better understanding of the impacts to beneficial uses and water quality standards exceedances. If, as a result of the more complete assessment, there is sufficient evidence to indicate that water quality standards are indeed exceeded, the water segment on the preliminary list would be moved to the section 303(d) list." (FED at p. 36.) A preliminary list provides all stakeholders the assurance that attention will be focused on waters suspected to be impaired without imposing the consequences of developing a TMDL on stakeholders and the State and Regional Boards.

We are concerned that a Listing Policy which does not include at least a preliminary list will result in the Regional and State Boards being pressured to place water segments on the 303(d) list using some of the more subjective listing criteria currently contained in the Draft Listing Policy, for fear that the water segment would be forgotten. This preliminary list could also be used for impairments where the pollutant has not yet been identified (such as for toxicity, adverse biological response or degradation of biological populations) or for cases where current water quality standards may be inappropriate. A watch or preliminary list is also an appropriate place for water segments exhibiting negative "trends" in water quality but where standards are currently being obtained.

2. Listing of Water Segments Due to Trends in Water Quality

We disagree that "trends in water quality" should be used as a criterion to list water segments that would not otherwise meet the conditions in the Draft Listing Policy. This criterion allows inclusion of water segments on the 303(d) list in absence of information that water quality standards are exceeded or that beneficial uses are impaired. That is not the purpose of the 303(d) list, which is to set forth those waters that do not meet water quality standards and for which TMDLs are to be completed.

As stated in the FED, there are currently no widely accepted approaches for documenting trends and the data is often difficult to interpret. (See, FED at p. 139.) The Draft Listing Policy describes five very general guidelines for determining the trends, but these guidelines are ambiguous and lack the specific requirements for consistent and statistically valid data evaluations, requirements for data quality and quantity, and other similar provisions in the other listing factors.

For example, the Draft Listing Policy does not specify the amount of data (other than to use "data collected over 3 years") that should be used to evaluate the declining trend, or specify how much data is required to establish the baseline condition. The recommended minimum of three years of data may not be adequate to account for seasonal and interannual effects, or to separate out the occurrence of adverse biological response or degradation of biological populations from within-site variability for those factors. Hydrologic conditions such as droughts and *El Nino* weather patterns may be more likely to impact short-term trends in water quality than to increases in pollutant loading. The Draft Listing Policy also does not provide a standard threshold amount to assess when a decline would trigger a listing (i.e. increase in a pollutant concentration of 25% in five years, exceedances of at least five percent of the samples, etc.). The Draft Listing Policy does not provide delisting guidelines if a water segment is listed by this criterion, leaving water segments without water quality impairments on the 303(d) list unless it can be shown that the data was faulty. Because this criterion of the Draft Listing Policy does not require an exceedance of a water quality standard, we are uncertain how a water segment listed under this criterion would be affected by revised water quality standards.

Because this criterion is so subjective, we believe this criterion is inappropriate for listing purposes and will lead to inconsistent interpretation of antidegradation requirements because each Regional Board would develop its own set of criterion. The 303(d) list is not the appropriate forum to evaluate the proper balance between the highest water quality achievable and the maximum benefit to the people of the State. We believe that a preliminary or watch list is the appropriate placeholder for such water segments.

3. Review Criteria for Existing 303(d) Listings

We recommend that the State Board revise the language in Section 6.1 to allow review of any water segment listed on the 2002 Section 303(d) list for conformance with the adopted listing policy when an interested party requests the review and states why, using the adopted policy, the listing decision would change, rather than limit the review to water segments with *new* data or information. Although the requirement for new data or information may be reasonable to reassess listings decisions made based upon the final adopted statewide listing policy, we do not believe the requirement for *new* data or information is appropriate in reassessing the 2002 Section 303(d) List which, as you are aware, simply re-adopted the 1998 Section 303(d) List, wherein many historical listings have been called into question.

Examples of questionable historical listings are the nuisance listings for the Burbank Western Channel. The Burbank channel is currently listed for algae, odor and scum. These listings were carried forward from the 1998 list to the 2002 list. It is unclear how these listings were created and what additional data we can present to have these listings removed. The draft policy states that we are required to submit data to have these re-evaluated. It is unlikely that visual observations will be accepted as new data although we believe that this is how these listings were originally established.

TMDLs take significant time and resources to develop. In the State Board's document "*A Process for Addressing Impaired Waters in California*" (December 2003), the State Board estimated the staff time to develop a bacteria TMDL to be a *minimum* of 684 hours, not including time for the regulatory process and approval tasks (*e.g.*, OAL review, etc.). Requiring that TMDLs be developed for water segments whose listings cannot withstand the criteria in the Draft Listing Policy burdens not only State and Regional Board staff, but stakeholders and watershed groups as well.

The Draft Listing Policy continues the practice of using the existing 303(d) list as a basis for the next list. Many of these listing have never been reevaluated under any guidelines because the lack of new data or information. (See, FED at p. 189.) However, many of the listings decisions on the current 303(d) list were made with limited data, which would *not* meet the objective listing criteria set forth in the Draft Listing Policy, such as statistical exceedance frequency requirements, data quantity or quality requirements, *etc.* Requiring *new* information or data for these cases adds an onerous burden to the reevaluation process for existing listings.

The draft Functional Equivalent Document (FED) only considered two options with regard to future review of past listing decisions: (1) a complete reevaluation of the existing list for conformance with listing policy; or (2) an evaluation only when *new* data is available. We believe that it is both reasonable and fair to examine and adopt a third option that would allow review of existing segments without requiring the data or information to be new. This would address some concerns stated in the evaluation of other two options in the FED.

First, it would not require staff to review the entire existing 303(d) list at this time, but would focus efforts on those segments where an interested party requests the review and states how under the adopted policy the listing decision would change. Second, it would allow reevaluation of existing listings that do not

warrant the development of costly and time consuming TMDLs on segments that do not meet the listing criteria. This would save both staff time and money to focus on segments where a TMDL is really warranted. Third, it does not require an interested party to obtain *new data or information* when the existing information does not warrant a listing decision. Segments needing additional data could be placed on a preliminary list.

We believe that this third approach is both fair and reasonable and strongly urges the State Board to include this option in the FED and adopt it in the final Listing Policy. This can be done by modifying the language in Section 6.1 to allow an interested party to request review of an existing listing by stating how the newly adopted policy would lead to a different listing decision without having to provide new data or information.

4. Evaluating Narrative Objectives Using Numerical Guidelines

The Draft Listing Policy states in Section 6.2.3 that numeric evaluation guidelines "are not water quality objectives and should only be used for the purpose of developing the section 303(d) list." We do not believe that narrative objectives or evaluation guidelines should be used as a substitute for, or to implement new, numeric objectives. All new numeric objectives should first be adopted in accordance with Sections 13241 and 13242 of the Water Code. Numeric values, which are used as the basis for 303(d) listing, are being used in exactly the same manner that adopted numeric water quality objectives would be used. Therefore, the final Listing Policy should require that numeric "guidelines" used as the basis for 303(d) listing as an interpretation of a narrative objective either be adopted as water quality objectives under the Water Code procedures or that the numeric guidelines be adopted as part of the 303(e) continuing planning process subject to notice and comment. We do not believe it makes sense to list a water body based on a numeric evaluation guideline that cannot be used for other purposes including developing an appropriate TMDL.

In addition, the final Listing Policy should state that sediment guidelines such as effects range-median (ERM) and probable effects level (PEL) are used to indicate potential effects, and do not measure actual beneficial use impairment. These sediment guidelines are merely a predictive tool, and do not indicate whether a sediment pollutant is bioavailable or not. Without such indication, We believe that when only predicative tools are used, water segments that may indicate sediment toxicity should be placed on a preliminary list to determine if beneficial uses are actually being impaired.

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We also recommend that the final Listing Policy require the Regional and State Board to assess the appropriateness of the guideline in the hydrographic unit and not only rely on guideline previously used.

Thank you for this opportunity to provide these comments. Should you wish any further information about either of these issues, please contact Rodney Andersen at (818) 238-3931.

Sincerely yours,



Rodney Andersen
Principal Civil Engineer



Bonnie Teaford
City Engineer

cc: Craig S.J. Johns, Co-Chair, AB 982 PAG
Roberta Larson, CASA